



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 28, 1996

Ms. Terri Hale
Legal Assistant
Fielding, Barrett & Taylor, L.L.P.
3400 Bank One Tower
500 Throckmorton Street
Fort Worth, Texas 76102-3821

OR96-0447

Dear Ms. Hale:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code.¹ Your request was assigned ID# 33226.

The City of Keene (the "city") received a request for information concerning certain property. You state that the "summary of events as presented by the Mayor" on the property has been released to the requestor. You object, however, to the release of the "summary of events and position taken by the city attorney" concerning the property. You contend that this information is excepted under sections 552.101 and 552.107² of the Government Code.

Section 552.107(1) excepts from disclosure

¹We note that the open records laws were substantially amended by the Seventy-fourth Legislature. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, 1995 Tex. Sess. Law Serv. 5127 (Vernon) (codified as amendments to Gov't Code ch. 552). The amendments to chapter 552 "affecting the availability of information, the inspection of information, or the copying of information, including the costs for copying information, apply only to a request for information that is received by a governmental body on or after September 1, 1995." *Id.* § 26(a), 1995 Tex. Sess. Law Serv. at 5142 (Vernon). A request for information that is received by a governmental body prior to September 1, 1995, is governed by the law in effect at the time the request is made. *Id.*

²In Open Records Decision No. 574 (1990), this office determined that section 552.107 is the appropriate section for a governmental body to cite when seeking exception for communications between it and its legal counsel. Formerly, information of this type was often dealt with under section 552.101.

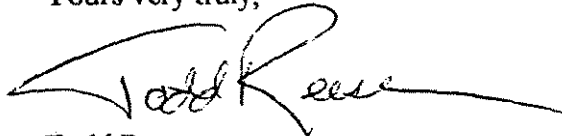
information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas.

Act of May 4, 1993, 73d Leg., R.S., ch. 268, § 1, 1993 Tex. Gen. Laws 583, 600, *amended by* Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 7, 1995 Tex. Sess. Law Serv. 5127, 5131. Although section 552.107(1) excepts information within rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct, the rule cannot be applied as broadly as written to information that is requested under the Open Records Act. Open Records Decision No. 574 (1990) at 5. To prevent governmental bodies from circumventing the Open Records Act by transferring information to their attorneys, section 552.107(1) is limited to material within the attorney-client privilege for confidential communications; "unprivileged information," as defined by rule 1.05, is not excepted under section 552.107(1). Open Records Decision Nos. 574 (1990) at 5, 462 (1987) at 13-14 (explaining scope of attorney-client privilege). Furthermore, section 552.107(1) does not protect information not containing legal advice or opinion, or revealing client confidences. Open Records Decision No. 574 (1990) at 3, 5. Information may be withheld under section 552.107(1) only to the extent that it documents confidences of a governmental representative to its attorney or reveals the attorney's legal advice and opinions. Open Records Decision Nos. 589 (1991), 574 (1990).

We have reviewed the information submitted for our consideration. We agree that the city attorney's notes constitute her legal advice, opinion, and recommendations to the city council or otherwise reveals client confidences. You may withhold the notes under section 552.107(1) of the Government Code.³

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal flourish extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/LBC/ch

³As we resolve your request under section 552.107, we need not consider the applicability of section 552.101 or the city's work product assertions.

Ref: ID# 33226

Enclosures: Submitted documents

cc: Mr. Tom Kimbrow
Route 5, Box 54A
Cleburne, Texas 76031
(w/o enclosures)